IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6040 of 1998
with
SPECIAL CIVIL APPLICATION No. 6042 of 1998

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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VILLAGE PANCHAYAT OF DUDHAI GRAM - Petitioner(s)

Versus

MAMAD HUSAIN KURESHI - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner No(s).: 1.
MR AK CLERK for Respondent No(s).: 1.
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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI
Date : 17/08/2005

ORAL JUDGMENT

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1. These petitions are directed against the judgment and award dated 16th November, 1997 passed by the Labour Court, Bhuj, in Reference [L.C.G.] Nos. 52 & 53

of 1996, whereby the Labour Court has directed the petitioner to reinstate the respondents on their original post with continuity of service along with back wages.

2. The short facts of the case are that the respondents were working as a Valveman with the petitioner. It is the case of the respondents that they were working as such since last seven years. The petitioner without following any procedure under the Industrial Disputes Act, 1947 terminated their services w.e.f. 31st July, 1987. Feeling aggrieved by the said award, the respondents raised an industrial dispute which was ultimately referred to the Labour Court for adjudication. The Labour Court after considering the materials produced before it, passed the impugned award. Hence, this petition.

3. I have heard the learned advocates for the parties and have perused the materials produced on record. Having perused the impugned award it transpires that the Labour Court has not committed any error in ordering reinstatement with continuity of service. The Labour Court has found that the respondents have worked as Peon for eight to ten years. Thus, I am in complete

agreement with the reasonings adopted and findings arrived at by the Labour Court for awarding reinstatement with continuity in service to the respondents.

4. However, so far as the aspect of back wages is concerned, it appears that the Labour Court has not given any cogent reasons as to on what basis, it has awarded back wages to the respondents. Moreover in view of the principle laid down by the Apex Court in the case of Ram Ashrey Singh v. Ram Bux Singh reported in (2003) II L.L.J. p.176, a workman has no automatic entitlement to back wages, since it is discretionary and has to be dealt with in accordance with the facts and circumstances of each case.

4.2. In the case of General Manager, Haryana Roadways v. Rudhan Singh reported in J.T. 2005 (6) S.C. p. 137, [2005 (5) S.C.C. p. 591], it has been held that an order for payment of back wages should not be passed in a mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Hence, the impugned award qua back wages is required to be quashed and set aside.

5. In above view of the matter, the petitions are partly allowed. The impugned award dated dated 16th November, 1997 passed by the Labour Court, Bhuj, in Reference [L.C.G.] Nos. 52 & 53 of 1996, qua reinstatement with continuity in service is confirmed, and qua back wages, it is quashed and set aside. It is however clarified that 20% back wages which were granted vide order dated 8th February, 2000 shall not be recovered from the respondents. The petitioner shall reinstate the respondents in service within one month and shall also grant all the benefits from the date of publication of the award till they are reinstated in service. The said benefits to be given within a period of six months from the date of receipt of writ of this order. Rule is made absolute to the aforesaid extent with no order as to costs.

[K.S. JHAVERI, J.]

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